

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**IN RE:**

**JESSICA L. SIMMS**

**NO. 17-14487 JDW**

**MOTION FOR RELIEF FROM STAY AND CO-DEBTOR STAY**

Comes now Capital One Auto Finance, a division of Capital One, N.A. ("Capital One"), by and through its counsel of record, Byrd & Wiser, and files this its Motion for Relief from Stay and Co-Debtor Stay, pursuant to Sections 362 and 1301 of the Bankruptcy Code, and in support of same would show unto the Court the following, to-wit:

**I**

The Debtor filed her Chapter 13 Petition on or about November 27, 2017.

**II**

That Capital One is the holder of a secured claim in the principal sum of \$14,733.69, secured by the Debtor's 2012 Kia Optima, VIN 5XXGM4A75CG020639, all as more fully set forth on Exhibit "A" which is attached hereto and incorporated herein by reference. Jacqueline Simms, a non-debtor, is a joint obligor pursuant to the Retail Installment Sale Contract, being Exhibit "A" attached hereto.

**III**

Capital One would show unto the Court that, pursuant to the Debtor's Chapter 13 Plan, the Debtor proposes to surrender Capital One's collateral to the co-signer.

**IV**

Capital One would furthermore show that for the reason stated above, adequate cause exists for termination of the Automatic Stay pursuant to Section 362(d) of the Bankruptcy Code as to the Movant, Capital One.

**V**

Premised upon the above, adequate cause exists for termination of the co-Debtor

stay pursuant to the provisions of Section 1301 of the Bankruptcy Code as to Capital One.

WHEREFORE, premises considered, Capital One would pray that after notice and hearing this Court enter its Order terminating the Automatic Stay and Co-Debtor Stay of Sections 362 and 1301 of the Bankruptcy Code as to the Movant, Capital One, so as to allow it to pursue its rightful remedies as to its subject matter collateral, and that this Court furthermore enter its Order abandoning the subject matter vehicle as property of the estate, and Capital One furthermore prays that it be awarded its reasonable attorney's fees necessitated by the filing of the instant motion, and Capital One prays for such other and further relief as is just and proper in the premises.

Respectfully submitted,

CAPITAL ONE AUTO FINANCE, A  
DIVISION OF CAPITAL ONE, N.A.

BY: BYRD & WISER

BY:

  
ROBERT ALAN BYRD

MSB #7651

E-Mail: [rab@byrdwiser.com](mailto:rab@byrdwiser.com)

BYRD & WISER

ATTORNEYS AT LAW

145 MAIN STREET

P.O. BOX 1939

BILOXI, MISSISSIPPI 39533

TELEPHONE (228) 432-8123

FAX (228) 432-7029

**CERTIFICATE**

I, ROBERT ALAN BYRD, Attorney for Capital One Auto Finance, a Division of Capital One, N.A., do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the court registered e-filers of CM/ECF and/or via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Relief from Stay and co-Debtor Stay to the following:

Michael Boyd, Attorney for Debtor, at [boydlawoffice@yahoo.com](mailto:boydlawoffice@yahoo.com)

Locke Barkley, Trustee, at [sbeasley@barkley13.com](mailto:sbeasley@barkley13.com)

Office of the U.S. Trustee, at [USTPRegion05.JA.ECF@usdoj.gov](mailto:USTPRegion05.JA.ECF@usdoj.gov)

**WITH A COPY MAILED TO:**

Jessica L. Simms, Debtor  
385 Nail Road  
Apt. F 62  
Southaven, MS 38671

Jacqueline Simms, co-Debtor  
22 Second Street  
Cleveland, MS 38732

Jacqueline Simms, co-Debtor  
385 Nail Road  
Apt. F 62  
Southaven, MS 38671

This the 27<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
ROBERT ALAN BYRD



RETAIL INSTALLMENT SALE CONTRACT  
SIMPLE FINANCE CHARGE

Dealer Number \_\_\_\_\_ Contract Number \_\_\_\_\_

Buyer Name and Address (Including County and Zip Code) JACQUELINE SIMMS 22 SECOND ST CLEVELAND MS 38732 BOLIVAR	Co-Buyer Name and Address (Including County and Zip Code) JESSICA SIMMS 22 SECOND ST CLEVELAND MS 38732 BOLIVAR	Creditor/Seller Name and Address PATTY PECK HONDA 555 SUNNYBROOK RD RIDGELAND MS 39157
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor / Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending disclosures below are part of this contract.

Year/Used/Model	Year	Make	Model	Vehicle Identification Number	Vehicle Weight	Primary Use For Which Purchased
USED	2012	KIA	OPTIMA	5XKGM4A75CG828639		Personal, family, or household (unless otherwise indicated below) <input type="checkbox"/> business <input type="checkbox"/> agricultural

**FEDERAL TRUTH-IN-LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
21.00%	\$ 14987.09	\$ 19523.95	\$ 34511.04	\$ 34511.04

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	\$ 479.32	Monthly beginning 12/03/2012

Or As Follows: N/A

Late Charge: If a payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 50.00, unless the vehicle is a commercial vehicle. For a commercial vehicle, if payment is not received in full within 15 days after it is due, you will pay a late charge of \$ 40.00, unless the vehicle is a commercial vehicle. In either case, the late charge is a maximum charge of \$ 50.00.

Security Interest: You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, and required payments in full before the scheduled date and security interest.

**ITEMIZATION OF AMOUNT FINANCED**

1. Cash Price (including \$ 929.00 sales tax) \$ 19329.00 (1)

2. Total Downpayment: N/A

3. Other Charges (including amounts paid to others on your behalf) \$ 19329.00 (2)

4. Other Charges (including amounts paid to others on your behalf) \$ 19329.00 (2)

5. Cost of Optional Credit Insurance Paid to Insurance Company or Companies: N/A

6. Vendor's Single Interest Insurance: N/A

7. Other Charges (including amounts paid to others on your behalf) \$ 19329.00 (2)

8. Amount Financed - Physical Balance (2 + 5) \$ 19523.95 (3)

9. Finance Charge \$ 14987.09 (4)

10. Total of Payments - Total Balance (3 + 4) \$ 34511.04 (5)

OPTION: ☐ You pay no finance charge if the Amount Financed, item 8, is paid in full on or before N/A.

OPTIONAL GAP CONTRACT: A gap contract (also called a "gap" contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 10 of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term: N/A

Buyer Signs: N/A

**NO COOLING OFF PERIOD**

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

HOW THIS CONTRACT CAN BE CHANGED: This contract contains the entire agreement between you and the seller. Any changes to this contract must be in writing and signed by both you and the seller. If you sign this contract, you agree to the terms and conditions of this contract. If you do not agree to the terms and conditions of this contract, you may return this contract to the seller for a full refund of any money you have paid. If you do not return this contract to the seller, you agree to the terms and conditions of this contract.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign.

You agree to the terms of this contract and any dispute resolution agreement you signed with this contract. You confirm that before you signed this contract and any dispute resolution agreement, we gave them to you, and you were free to take them and review them. You confirm that you received a completely filled-in copy of these documents when you signed them.

Buyer Signs: *Jacqueline Simms* Date: 12/02/12 Co-Buyer Signs: *Jessica Simms* Date: 12/02/12

Co-Buyer and Other Chances: X Co-Buyer is a person who is requested for signing the contract. An other chance is a person whose name is on the title to the vehicle but does not have to sign the contract. The other person agreed to the security interest in the vehicle given to us in the contract.

Other Chances: N/A

Seller Sign: PATTY PECK HONDA Date: 12/02/12 By: *Patty Peck* Title: *FMG*

Seller assigns as intended in the contract: CAPITAL ONE AUTO FINANCE (Assigned under the terms of Seller's agreement) with Assignee: ☐ Assigned with recourse ☐ Assigned with limited recourse

PATTY PECK HONDA By: *Patty Peck* Title: *FMG*

ORIGINAL LENDER HOLDER

Insurance: You may buy the physical damage insurance the contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest Insurance is required a checkmark below.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

☐ Credit Life ☐ Buyer ☐ Both ☐ Credit Disability ☐ Buyer ☐ Co-Buyer ☐ Both

Premium: Credit Life \$ N/A Credit Disability \$ N/A

Insurance Company Name: N/A

Home Office Address: N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose the insurance, the cost is shown in item 10 of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. The insurance may not pay all you owe on the contract if you die before the payment schedule ends. Credit disability insurance does not cover any increase in your payment or in the amount of payments due to credit life insurance and credit disability insurance until the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

Type of Insurance: N/A

Premium: N/A

Insurance Company Name: N/A

Home Office Address: N/A

Type of Insurance: N/A

Premium: N/A

Insurance Company Name: N/A

Home Office Address: N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost. I want the insurance checked above.

Buyer Signature: N/A Date: N/A

Co-Buyer Signature: N/A Date: N/A

**LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED BY OTHERS IS NOT INCLUDED.**

VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance). If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (lossless, see, then) VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you select to purchase VSI insurance through the Creditor, the cost of this insurance is \$ N/A, and is added shown in item 10 of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

Returned Check Charge: You agree to pay us the actual charges assessed by a financial institution up to \$15.00, if any check you give us is dishonored for insufficient funds.

OTHER IMPORTANT AGREEMENTS

1. FINANCE CHARGE AND PAYMENTS

- How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- How we will apply payments. We will apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.

2. YOUR OTHER PROMISES TO US

- If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- Security interest. You give us a security interest in:  
The vehicle and all parts or goods put on it;  
All money or goods received (proceeds) for the vehicle;  
All insurance, maintenance, service, or other contracts we finance for you; and  
All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.  
This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium of the insurance and a finance charge equal to the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law allows.  
If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- What happens to returned insurance, maintenance, service, or other contract charges. If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

- If you pay late, we may also take the steps described below.
- You may have to pay all you owe at once, if you break your promises (default), we may demand that you pay all you owe on this contract at once, subject to your right to redeem the vehicle described below. Default means:
    - You do not pay any payment on time;
    - You give false, incomplete, or misleading information on a credit application;
    - You start a proceeding in bankruptcy or one is started against you or your property; or
    - You break any agreements in this contract.
 The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's fee and court costs as the law allows. The attorney's fee will not exceed 15% of the amount you owe.
- We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

- How you can get the vehicle back if we take it. If we repossess the vehicle, you may pay to get it back (redeem) by paying all payments that are past due when you redeem, any late charges, and any expenses we incurred related to taking the vehicle, holding it, and preparing it for sale. After you redeem, you must make the remaining payments under this contract. Your right to redeem ends when we sell the vehicle.
- We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.

- What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

- Used Car, Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.  
Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

- Servicing and Collection Contacts. You agree that we may try to contact you in writing, by e-mail, or using prerecorded/automated voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in those and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

- Applicable Law. Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS THEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.



# CERTIFICATE OF TITLE

STATE OF MISSISSIPPI

ORIGINAL

VEHICLE IDENTIFICATION NUMBER  
5XXGM4A75CG020639

MAKE  
KIA

YEAR  
2012

MODEL  
OPT

BODY  
4D

TITLE NUMBER  
G415034-01

TITLE DATE  
01142013

DATE OF FIRST SALE  
FOR USE NEW ONLY

NO. CYL.  
04

NEW / USED  
X

TYPE OF VEHICLE  
PASS

PASS.  
OR GVW  
000

ODOMETER - TENTHS NOT INCLUDED

023923

ACTUAL MILEAGE

OWNER

SIMMS JACQUELINE OR JESSICA  
22 SECOND ST  
CLEVELAND MS 38732

1ST LIENHOLDER (OR OWNER IF NO LIEN)

CAPITAL ONE AUTO FINANCE  
P O BOX 255605  
SACRAMENTO CA 95865

DATE:

MONTH | DAY | YEAR

11/02/2012

2ND LIENHOLDER

DATE:

MONTH | DAY | YEAR

LIEN SATISFACTION: THE UNDERSIGNED HOLDER OF ABOVE DESCRIBED LIENS ON THE MOTOR VEHICLE DESCRIBED HEREON HEREBY ACKNOWLEDGES SATISFACTION THEREOF.

1ST LIEN \_\_\_\_\_ BY \_\_\_\_\_  
(LIENHOLDER) (SIGNATURE AND TITLE)

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_

2ND LIEN \_\_\_\_\_ BY \_\_\_\_\_  
(LIENHOLDER) (SIGNATURE AND TITLE)

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS

THE 14 DAY OF JANUARY 2013  
2014



CONTROL NUMBER  
19699153

DEPARTMENT OF REVENUE

The Mississippi Department of Revenue hereby certifies that on application duly made, the person named herein is registered by this office as the lawful owner of the vehicle described subject to the liens or security interests as may subsequently be filed with the Department of Revenue. This certificate of title is issued pursuant to the Mississippi Motor Vehicle Title Law Section 63-21-1, Mississippi Code of 1972, and subject to the provisions thereof.

VOID IF ALTERED